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Attorneys for Respondent

UNITED STATES DISTRICT COURT FOR THE

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

DAVID J. CARPENTER, )  
 ) No. C 98-2444 MMC  
 ) and No. C 00-3706 MMC

Petitioner, )

vs.  
VINCENT CULLEN, Acting Warden  
of San Quentin State Prison,  
Respondent

## **PROPOSED LITIGATION SCHEDULE and [PROPOSED] ORDER**

1 Pursuant to the order of November 24, 2009 (98-2444 Doc. 210; 00-3706 Doc. 141),  
2 counsel for petitioner and respondent conferred by telephone on December 11, 2009, and have agreed  
3 upon the following:

4 1. For purposes of litigation, the claims in No. 98-2444 will be divided into nine groups  
5 as set forth in Appendix A and the claims in No. 00-3706 will be divided into nine groups as set forth  
6 in Appendix B. The groups of claims will be briefed and presented to the Court for decision in the  
7 order indicated, beginning with group 1. Claims in the same numbered group in No. 98-2444 and No.  
8 00-3706 will be presented to the Court for decision at approximately the same time, so the Court can  
9 consider them together.

10 2. With respect to claims in group 1 in No. 98-2444, petitioner will file a motion for  
11 summary judgment, motion for judgment on the pleadings, brief on the merits, or other appropriate  
12 document within 180 days after issuance of the Court's forthcoming scheduling order. With respect  
13 to the claims in group 1 in No. 00-3706, petitioner will file a similar document within 14 days after  
14 filing the motion or brief in No. 98-2444.

15 3. Respondent's responsive brief on group 1 in each case will be due 60 days after peti-  
16 tioner's motion or brief is filed. Petitioner's reply on group 1 in each case will be due within 30 days  
17 after respondent's responsive brief is filed. The claims in group 1 will then be ripe for decision by the  
18 Court, with or without oral argument as the Court prefers.

19 4. The same schedule will then be followed for the claims in group 2, with petitioner's  
20 motion or opening brief in No. 98-2444 due 180 days after the later of his two replies on group 1 claims  
21 is filed. Petitioner's motion or opening brief on group 2 claims in No. 00-3706 will be due 14 days  
22 later, and so forth.

23 5. The same schedule will then be followed for the claims in group 3.

24 6. Following the Court's decision on the claims in group 3 in both cases, counsel will  
25 meet and confer and present to the Court a proposed schedule for litigation of the remaining groups of  
26 claims. This will include a schedule for filing motions for evidentiary hearing and responses thereto,  
27 and a schedule for litigating questions of cause and prejudice with respect to claims the Court has  
28 previously found to be procedurally defaulted.

1  
2 Dated: December 26, 2009

/s/ *Michael M. Crain*  
MICHAEL M. CRAIN, Counsel for Petitioner

3  
4 Dated: January 19, 2010

/s/ *Robert D. Bacon*  
ROBERT D. BACON, Counsel for Petitioner

5  
6 Dated: January 6, 2010

/s/ *James William Bilderback II*  
JAMES WILLIAM BILDERBACK II, Counsel for Respondent  
in No. 98-2444

7  
8 Dated: January 6, 2010

/s/ *Stephanie C. Brenan*  
STEPHANIE C. BRENAN, Counsel for Respondent  
in No. 98-2444

9  
10 Dated: January 15, 2010

/s/ *Steven T. Oetting*  
STEVEN T. OETTING, Counsel for Respondent  
in No. 00-3706

11  
12 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
13  
14

15 Signed January 27, 2010  
16

17   
18 MAXINE M. CHESNEY  
19 UNITED STATES DISTRICT JUDGE  
20

21 Pursuant to section X.B. of General Order No. 45, Robert D. Bacon, counsel for the peti-  
22 tioner, certifies that concurrence in the filing of this document has been obtained from each of the other  
23 signatories.

24 /s/ *Robert D. Bacon*  
25  
26  
27  
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